

## Assembly Bill No. 1663

### CHAPTER 454

An act to amend Sections 56000, 56026.1, 56028.5, 56031, 56033.5, 56058, 56059, 56171, 56173, 56205, 56301, 56321, 56329, 56341, 56341.5, 56344, 56345, 56345.1, 56346, 56363, 56380.1, 56381, 56500.2, 56500.3, 56500.4, 56501.5, 56502, 56505, 56515, 56600.6, and 56841 of, to add Sections 56040.1 and 56345.2 to, to add Article 5 (commencing with Section 56070) to Chapter 1 of Part 30 of Division 4 of Title 2 of, and to repeal and add Section 56028 of, the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 2007. Filed with  
Secretary of State October 10, 2007.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1663, Evans. Special education: conformance to federal law.

(1) Existing law establishes a right of individuals with exceptional needs to receive free appropriate public education and ensures the right to special instruction and related services needed to meet their unique needs, in conformity with federal law.

This bill would make various revisions generally conforming state law to federal requirements relating to, among others, pupil identification, assessment, and eligibility; individualized education program development, including notice, implementation, and review; procedural safeguards, including due process hearing procedures and requirements; and pupil information confidentiality. The bill would also make clarifying, conforming, and other technical changes. To the extent that these revisions would impose new duties on local educational agencies, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 56000 of the Education Code is amended to read:  
56000. (a) The Legislature finds and declares that all individuals with exceptional needs have a right to participate in free appropriate public

education and special educational instruction and services for these persons are needed in order to ensure the right to an appropriate educational opportunity to meet their unique needs.

(b) The Legislature further finds and declares that special education is an integral part of the total public education system and provides education in a manner that promotes maximum interaction between children or youth with disabilities and children or youth who are not disabled, in a manner that is appropriate to the needs of both.

(c) The Legislature further finds and declares that special education provides a full continuum of program options, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education, to meet the educational and service needs in the least restrictive environment.

(d) It is the intent of the Legislature to unify and improve special education programs in California under the flexible program design of the Master Plan for Special Education. It is the further intent of the Legislature to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(e) It is the further intent of the Legislature that this part does not abrogate any rights provided to individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). It is also the intent of the Legislature that this part does not set a higher standard of educating individuals with exceptional needs than that established by Congress under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) It is the further intent of the Legislature that the Master Plan for Special Education provide an educational opportunity for individuals with exceptional needs that is equal to or better than that provided prior to the implementation of programs under this part, including, but not limited to, those provided to individuals previously served in a development center for handicapped pupils.

(g) It is the intent of the Legislature that the restructuring of special education programs as set forth in the Master Plan for Special Education be implemented in accordance with this part by all districts and county offices.

SEC. 2. Section 56026.1 of the Education Code is amended to read:

56026.1. (a) As provided in Section 300.102(a)(3)(i) of Title 34 of the Code of Federal Regulations, an individual with exceptional needs who graduates from high school with a regular high school diploma is no longer eligible for special education and related services.

(b) For purposes of this section and Section 56026, a “regular high school diploma” means a diploma conferred on a pupil who has met all local and state high school graduation requirements.

(c) As used in this section, and in accordance with Section 300.102(a)(3)(iv) of Title 34 of the Code of Federal Regulations, “regular

high school diploma” does not include an alternative degree that is not fully aligned with the academic standards of the State of California, such as a certificate or a General Educational Development credential (GED).

SEC. 3. Section 56028 of the Education Code is repealed.

SEC. 4. Section 56028 is added to the Education Code, to read:

56028. (a) “Parent” means any of the following:

(1) A biological or adoptive parent of a child.  
(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child’s behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

(3) A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child.

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child’s welfare.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b) (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this section.

(c) “Parent” does not include the state or any political subdivision of government.

(d) “Parent” does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

SEC. 5. Section 56028.5 of the Education Code is amended to read:

56028.5. “Public agency” means a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency and is not a school within a local educational agency, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs. For purposes of this part, “public agency,” means all of the public agencies listed in Section 300.33 of Title 34 of the Code of Federal Regulations.

SEC. 6. Section 56031 of the Education Code is amended to read:

56031. (a) “Special education,” in accordance with Section 1401(29) of Title 20 of the United States Code, means specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, including instruction conducted in the classroom, in the home, in hospitals and institutions, and other settings, and instruction in physical education.

(b) In accordance with Section 300.39 of Title 34 of the Code of Federal Regulations, special education includes each of the following, if the services otherwise meet the requirements of subdivision (a):

(1) Speech-language pathology services, or any other designated instruction and service or related service, pursuant to Section 56363, if the service is considered special education rather than a designated instruction and service or related service under state standards.

(2) Travel training.

(3) Vocational education.

(c) Transition services for individuals with exceptional needs may be special education, in accordance with Section 300.43(b) of Title 34 of the Code of Federal Regulations, if provided as specially designed instruction, or a related service, if required to assist an individual with exceptional needs to benefit from special education.

(d) Individuals with exceptional needs shall be grouped for instructional purposes according to their instructional needs.

SEC. 7. Section 56033.5 of the Education Code is amended to read:

56033.5. “Supplementary aids and services,” as provided in Section 1401(33) of Title 20 of the United States Code and in Section 300.42 of Title 34 of the Code of Federal Regulations, means aids, services, and other supports that are provided in regular education classes or other education-related settings and in extracurricular and nonacademic settings, to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate in accordance with Section 1412(a)(5) of Title 20 of the United States Code and Sections 300.114 to 300.116, inclusive, of Title 34 of the Code of Federal Regulations.

SEC. 8. Section 56040.1 is added to the Education Code, to read:

56040.1. In accordance with Section 1412(a)(5) of Title 20 of the United States Code and Section 300.114 of Title 34 of the Code of Federal Regulations, each public agency shall ensure the following to address the least restrictive environment for individuals with exceptional needs:

(a) To the maximum extent appropriate, individuals with exceptional needs, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

(b) Special classes, separate schooling, or other removal of individuals with exceptional needs from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

SEC. 9. Section 56058 of the Education Code is amended to read:

56058. Special education teachers providing instruction and educational services under this part shall meet the same “highly qualified” requirements, as defined in Section 1401(10) of Title 20 of the United States Code, and in Section 300.18 of Title 34 of the Code of Federal Regulations, and personnel qualifications described in Section 1412(a)(14) of Title 20 of the United States Code, and in Section 300.156 of Title 34 of the Code of Federal Regulations.

SEC. 10. Section 56059 of the Education Code is amended to read:

56059. (a) This part does not create a right of action on behalf of an individual with exceptional needs or class of pupils for failure of a state or local educational agency employee to be highly qualified.

(b) In accordance with Section 300.156(e) of Title 34 of the Code of Federal Regulations, nothing in this part prevents a parent from filing a complaint with the department under Section 56500.2, and under Sections 300.151 to 300.153, inclusive, of Title 34 of the Code of Federal Regulations, about staff qualifications.

SEC. 11. Article 5 (commencing with Section 56070) is added to Chapter 1 of Part 30 of Division 4 of Title 2 of the Education Code, to read:

Article 5. Qualifications for Designated Instruction and Services  
Personnel, Related Services Personnel, and Paraprofessionals

56070. (a) In accordance with Section 1412(a)(14)(A), (B), and (D) of Title 20 of the United States Code and Section 300.156(a), (b), and (d) of Title 34 of the Code of Federal Regulations, qualifications for designated instruction and services personnel, related services personnel, and paraprofessionals shall include the following:

(1) Be consistent with a state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or designated instruction and services, and related services.

(2) Ensure that personnel who deliver services in their discipline or profession meet the requirements of this subdivision and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education, designated instruction and services, and related services under this part to individuals with exceptional needs.

(b) Local educational agencies shall take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education, designated instruction and services, and related services under this part to individuals with exceptional needs.

SEC. 12. Section 56171 of the Education Code is amended to read:

56171. Pursuant to Section 300.131 of Title 34 of the Code of Federal Regulations, local educational agencies shall locate, identify, and assess all private school children with disabilities, including religiously affiliated schoolage children, who have disabilities and are in need of special education and related services attending private school in the service area of the local educational agencies where the private school is located in accordance with Section 56301. The activities undertaken to carry out this responsibility for private school children with disabilities shall be comparable to activities undertaken in accordance with Section 1412(a)(10)(A)(ii) of Title 20 of the United States Code.

SEC. 13. Section 56173 of the Education Code is amended to read:

56173. To meet the requirements of Section 56172, each local educational agency shall provide special education and related services to pupils with disabilities enrolled by a parent in private elementary and secondary schools, described in Section 56171, by expending an amount of federal state grant funds allocated to the state under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) equal to a proportionate amount of federal funds made available under the Part B grant program for local assistance, in accordance with Section 1412(a)(10)(A)(i) of Title 20 of the United States Code and Section 300.133 of Title 34 of the Code of Federal Regulations. In accordance with Section 300.131(d) of Title 34 of the Code of Federal Regulations, the cost of carrying out the child find requirements in Section 56171 cannot come from the proportional share of federal grant funds received pursuant to this section and Section 300.133 of Title 34 of the Code of Federal Regulations since those funds are required to be spent on the provision of services to the pupils with disabilities enrolled by a parent in private elementary and secondary schools.

The control of public funds used to provide special education and related services under Section 1412(a)(10)(A) of Title 20 of the United States Code, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). A public agency shall administer the funds and property.

SEC. 13.5. Section 56205 of the Education Code is amended to read:

56205. (a) Each special education local plan area submitting a local plan to the Superintendent under this part shall ensure, in conformity with Sections 1412(a) and 1413(a)(1) of Title 20 of the United States Code, and in accordance with Section 300.201 of Title 34 of the Code of Federal Regulations, that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing the following:

- (1) Free appropriate public education.
- (2) Full educational opportunity.
- (3) Child find and referral.
- (4) Individualized education programs, including development, implementation, review, and revision.
- (5) Least restrictive environment.

- (6) Procedural safeguards.
- (7) Annual and triennial assessments.
- (8) Confidentiality.
- (9) Transition from Subchapter III (commencing with Section 1431) of Title 20 of the United States Code to the preschool program.
- (10) Children in private schools.
- (11) Compliance assurances, including general compliance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.
- (12) (A) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and of the elected officials to whom the governing body or individual is responsible.
- (B) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.
- (C) Verification that a community advisory committee has been established pursuant to Section 56190.
- (D) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall do the following:
  - (i) Specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.
  - (ii) Identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local educational agencies within the special education local plan area in relation to the following:
    - (I) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.
    - (II) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local educational agencies within the special education local plan area.
    - (III) The operation of special education programs.
    - (IV) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.
    - (V) The preparation of program and fiscal reports required of the special education local plan area by the state.
  - (iii) Include copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(E) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9, and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special education and regular education teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(13) Personnel qualifications to ensure that personnel, including special education teachers and personnel and paraprofessionals providing related services, necessary to implement this part are appropriately and adequately prepared and trained in accordance with Sections 56058 and 56070 and Sections 1412(a)(14) and 1413(a)(3) of Title 20 of the United States Code.

(14) Performance goals and indicators.

(15) Participation in state and districtwide assessments, including assessments described under Section 1111 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.) and alternate assessments in accordance with Section 1412(a)(16) of Title 20 of the United States Code, and reports relating to assessments.

(16) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

(17) Maintenance of financial effort.

(18) Opportunities for public participation prior to adoption of policies and procedures.

(19) Suspension and expulsion rates.

(20) Access to instructional materials by blind individuals with exceptional needs and others with print disabilities in accordance with Section 1412(a)(23) of Title 20 of the United States Code.

(21) Overidentification and disproportionate representation by race and ethnicity of children as individuals with exceptional needs, including children with disabilities with a particular impairment described in Section 1401 of Title 20 of the United States Code and in accordance with Section 1412(a)(24) of Title 20 of the United States Code.

(22) Prohibition of mandatory medication use pursuant to Section 56040.5 and in accordance with Section 1412(a)(25) of Title 20 of the United States Code.

(b) Each local plan submitted to the Superintendent under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:



(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(B) Administrative costs of the plan.

(C) Special education services to pupils with severe disabilities and low incidence disabilities.

(D) Special education services to pupils with nonsevere disabilities.

(E) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(F) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(G) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(2) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each district in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and with Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the physical location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by districts, community schools operated by county offices, and juvenile court schools, regardless of whether the district or county office is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(3) A description of programs for early childhood special education from birth through five years of age.

(4) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a).

(5) A description of a dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the plan.

(6) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the Superintendent.

(7) A description of the process being utilized to meet the requirements of Section 56303.

(c) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method of ensuring that all requirements of each pupil's individualized education program are being met. The description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(d) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 14. Section 56301 of the Education Code is amended to read:

56301. (a) All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities attending private, including religious, elementary and secondary schools, regardless of the severity of their disabilities, and who are in need of special education and related services, shall be identified, located, and assessed and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services as required by Section 1412(a)(3) and (10)(A)(ii) of Title 20 of the United States Code. A child is not required to be classified by his or her disability so long as each child who has a disability listed in Section 1401(3) of Title 20 of the United States Code and who, by reason of that disability, needs special education and related services as an individual with exceptional needs defined in Section 56026.

(b) (1) In accordance with Section 300.111(c) of Title 34 of the Code of Federal Regulations, the requirements of this section also apply to highly mobile individuals with exceptional needs, including migrant children, and children who are suspected of being an individual with exceptional needs pursuant to Section 56026 and in need of special education, even though they are advancing from grade to grade.

(2) In accordance with Section 300.213 of Title 34 of the Code of Federal Regulations, the local educational agency shall cooperate in the efforts of the federal Secretary of Education, under Section 6398 of Title 20 of the United States Code, to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among other states, health and educational information regarding those children.

(c) (1) The child find process shall ensure the equitable participation in special education and related services of parentally placed private schoolchildren with disabilities and an accurate count of those children. Child find activities conducted by local educational agencies, or where applicable, the department, shall be similar to those activities undertaken for pupils in public schools.

(2) In accordance with Section 1412(a)(10)(A)(ii)(IV) of Title 20 of the United States Code, the cost of the child find activities in private, including religious, elementary and secondary schools, may not be considered in determining whether a local educational agency has met its obligations under the proportionate funding provisions for children enrolled in private, including religious, elementary and secondary schools.

(3) The child find process described in paragraph (1) shall be completed in a time period comparable to that for other pupils attending public schools in the local educational agency.

(d) (1) Each special education local plan area shall establish written policies and procedures pursuant to Section 56205 for use by its constituent local agencies for a continuous child find system that addresses the relationships among identification, screening, referral, assessment, planning, implementation, review, and the triennial assessment. The policies and procedures shall include, but need not be limited to, written notification of all parents of their rights under this chapter, and the procedure for initiating a referral for assessment to identify individuals with exceptional needs.

(2) In accordance with Section 1415(d)(1)(A) of Title 20 of the United States Code, and Section 300.504(a) of Title 34 of the Code of Federal Regulations, parents shall be given a copy of their rights and procedural safeguards only one time a school year, except that a copy also shall be given to the parents:

(A) Upon initial referral or parental request for assessment.

(B) Upon receipt of the first state complaint under Section 56500.2 in a school year.

(C) Upon receipt of the first due process hearing request under Section 56502 in a school year.

(D) When a decision is made to make a removal that constitutes a change of placement of an individual with exceptional needs because of a violation of a code of pupil conduct in accordance with Section 300.530(h) of Title 34 of the Code of Federal Regulations.

(E) Upon request by a parent.

(3) A local educational agency may place a current copy of the procedural safeguards notice on its Internet Web site, if such Web site exists, pursuant to Section 1415(d)(1)(B) of Title 20 of the United States Code.

(4) The contents of the procedural safeguards notice shall contain the requirements listed in Section 1415(d)(2) of Title 20 of the United States Code and Section 300.504(c) of Title 34 of the Code of Federal Regulations.

(e) Child find data collected pursuant to this chapter, or collected pursuant to a regulation or an interagency agreement, are subject to the confidentiality requirements of Sections 300.611 to 300.627, inclusive, of Title 34 of the Code of Federal Regulations.

SEC. 15. Section 56321 of the Education Code is amended to read:

56321. (a) If an assessment for the development or revision of the individualized education program is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment not counting days between the pupil's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent or guardian agrees, in writing, to an extension. However, in any event, the assessment plan shall be developed within 10 days after the commencement of the subsequent regular school year or the pupil's regular school term as determined by each district's school calendar for each pupil for whom a

referral has been made 10 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 15-day time shall recommence on the date that the pupil's regular schooldays reconvene. A copy of the notice of a parent's or guardian's rights shall be attached to the assessment plan. A written explanation of all the procedural safeguards under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and the rights and procedures contained in Chapter 5 (commencing with Section 56500), shall be included in the notice of a parent's or guardian's rights, including information on the procedures for requesting an informal meeting, prehearing mediation conference, mediation conference, or due process hearing; the timelines for completing each process; whether the process is optional; and the type of representative who may be invited to participate.

(b) The proposed assessment plan given to parents or guardians shall meet all the following requirements:

- (1) Be in language easily understood by the general public.
- (2) Be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless to do so is clearly not feasible.
- (3) Explain the types of assessments to be conducted.
- (4) State that no individualized education program will result from the assessment without the consent of the parent.

(c) (1) The local educational agency proposing to conduct an initial assessment to determine if the child qualifies as an individual with exceptional needs shall make reasonable efforts to obtain informed consent from the parent of the child before conducting the assessment, in accordance with Section 1414(a)(1)(D) of Title 20 of the United States Code.

(2) If the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the local educational agency may, but is not required to, pursue the initial assessment utilizing the procedures described in Section 1415 of Title 20 of the United States Code and in accordance with paragraph (3) of subdivision (a) of Section 56501 and subdivision (e) of Section 56506.

(3) In accordance with Section 300.300(a)(3)(ii) of Title 34 of the Code of Federal Regulations, the local educational agency does not violate its obligation under Section 300.111 and Sections 300.301 to 300.311, inclusive, of Title 34 of the Code of Federal Regulations if it declines to pursue the assessment.

(4) The parent or guardian shall have at least 15 days from the receipt of the proposed assessment plan to arrive at a decision. The assessment may begin immediately upon receipt of the consent.

(d) Consent for initial assessment shall not be construed as consent for initial placement or initial provision of special education and related services to an individual with exceptional needs, pursuant to Section 1414(a)(1)(D)(i)(I) of Title 20 of the United States Code.

(e) In accordance with Section 300.300(d)(1) of Title 34 of the Code of Federal Regulations, parental consent is not required before reviewing

existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children.

(f) Pursuant to Section 1414(a)(1)(E) of Title 20 of the United States Code, the screening of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services.

(g) In accordance with Section 300.300(d)(5) of Title 34 of the Code of Federal Regulations, to meet the reasonable efforts requirement in subdivision (c), the local educational agency shall document its attempts to obtain parental consent using the procedures in subdivision (h) of Section 56341.5.

SEC. 16. Section 56329 of the Education Code is amended to read:

56329. As part of the assessment plan given to parents or guardians pursuant to Section 56321, the parent or guardian of the pupil shall be provided with a written notice that shall include all of the following information:

(a) (1) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent or guardian and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations.

(2) In making a determination of eligibility under paragraph (1), a pupil shall not, pursuant to Section 1414(b)(5) of Title 20 of the United States Code, and Section 300.306(b) of Title 34 of the Code of Federal Regulations, be determined to be an individual with exceptional needs if the determinant factor for the determination is one of the following in subparagraphs (A) to (C), inclusive, plus subparagraph (D):

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in Section 6368(3) of Title 20 of the United States Code.

(B) Lack of appropriate instruction in mathematics.

(C) Limited-English proficiency.

(D) If the pupil does not otherwise meet the eligibility criteria under Section 300.8(a) of Title 34 of the Code of Federal Regulations.

(3) A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent or guardian.

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. A parent or guardian is entitled to only one independent educational assessment

at public expense each time the public education agency conducts an assessment with which the parent or guardian disagrees. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian maintains the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(d) If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. An observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and shall not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by a public education agency of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of an observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in a due process or judicial proceeding regarding the free appropriate public education of that other pupil.

SEC. 17. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) One or both of the pupil's parents, a representative selected by a parent, or both, in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(2) Not less than one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment. If more than one regular education teacher is providing instructional services to the individual with exceptional needs, one regular education teacher may be designated by the local educational agency to represent the others.

The regular education teacher of an individual with exceptional needs, to the extent appropriate, shall participate in the development, review, and revision of the pupil's individualized education program, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the pupil, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the pupil, consistent with Section 1414(d)(1)(A)(i)(IV) of Title 20 of the United States Code.

(3) Not less than one special education teacher of the pupil, or if appropriate, not less than one special education provider of the pupil.

(4) A representative of the local educational agency who meets all of the following:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs.

(B) Is knowledgeable about the general education curriculum.

(C) Is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who can interpret the instructional implications of the assessment results. The individual may be a member of the team described in paragraphs (2) to (6), inclusive.

(6) At the discretion of the parent, guardian, or the local educational agency, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the individualized education program team.

(7) Whenever appropriate, the individual with exceptional needs.

(c) In accordance with Sections 300.308 and 300.310 of Title 34 of the Code of Federal Regulations, for a pupil suspected of having a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. In accordance with Section 300.310 of Title 34 of the Code of Federal Regulations, at least one team member shall observe the pupil's academic performance and behavior in the areas of difficulty in the pupil's learning environment, including in the regular

classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(d) (1) The local educational agency shall invite an individual with exceptional needs to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the individual and the needed transition services for the individual to assist the individual in reaching those goals under subparagraphs (A) and (B) of paragraph (8) of subdivision (a) of Section 56345.

(2) If the individual with exceptional needs does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the individual's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or an individual with exceptional needs who has reached the age of majority, in implementing the requirements of paragraph (1), the local educational agency shall invite a representative of a participating agency that is likely to be responsible for providing or paying for transition services.

(e) A local educational agency may designate another local educational agency member of the individualized education program team to serve also as the representative required pursuant to paragraph (4) of subdivision (b) if the requirements of subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b) are met.

(f) A member of the individualized education program team described in paragraphs (2) to (5), inclusive, of subdivision (b) shall not be required to attend an individualized education program meeting, in whole or in part, if the parent of the individual with exceptional needs and the local educational agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(g) A member of the individualized education program team described in subdivision (f) may be excused from attending an individualized education program meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if both of the following occur:

(1) The parent, in writing, and the local educational agency consent to the excusal after conferring with the member.

(2) The member submits, in writing, to the parent and the individualized education program team input into the development of the individualized education program prior to the meeting.

(h) A parent's agreement under subdivision (f) and consent under subdivision (g) shall be in writing.

(i) In the case of a child who was previously served under Chapter 4.4 (commencing with Section 56425), Early Education for Individuals with Exceptional Needs, or the California Early Intervention Services Act under Title 14 (commencing with Section 95000) of the Government Code, an



invitation to the initial individualized education program team meeting shall, at the request of the parent, be sent to the infants and toddlers with disabilities service coordinator, as described in Subchapter III (commencing with Section 1431) of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other representatives of the early education or early intervention system to assist with the smooth transition of services.

SEC. 18. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each local educational agency convening a meeting of the individualized education program team shall take steps to ensure that no less than one of the parents or guardians of the individual with exceptional needs are present at each individualized education program meeting or are afforded the opportunity to participate.

(b) Parents or guardians shall be notified of the individualized education program meeting early enough to ensure an opportunity to attend.

(c) The individualized education program meeting shall be scheduled at a mutually agreed-upon time and place. The notice of the meeting under subdivision (b) shall indicate the purpose, time, and location of the meeting and who shall be in attendance. Parents or guardians also shall be informed in the notice of the right, pursuant to Section 300.322(b)(1)(ii) of Title 34 of the Code of Federal Regulations, to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs, and inform the parents of subdivision (i) of Section 56341 relating to the participation of the infants and toddlers with disabilities service coordinator under Subchapter III (commencing with Section 1431) of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) at the initial individualized education program team meeting for a child previously served under the Subchapter III program.

(d) As part of the participation of an individual with exceptional needs in the development of an individualized education program, as required by federal law, the individual with exceptional needs shall be allowed to provide confidential input to any representative of his or her individualized education program team.

(e) For an individual with exceptional needs, beginning no later than the effective date of the individualized education program in effect when the individual reaches the age of 16 years, or younger if determined appropriate by the individualized education program team, the meeting notice also shall indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the individual, pursuant to Section 56345.1 and Section 1414(d)(1)(A)(i)(VIII) of Title 20 of the United States Code, and the meeting notice shall indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the preferences and interests of the pupil are considered in accordance with Section 300.321(b)(2) of Title 34 of the Code of Federal Regulations.

(f) The local educational agency, to the extent appropriate, with the consent of the parents or individual with exceptional needs who has reached

the age of majority, and in accordance with Section 300.321(b)(3) of Title 34 of the Code of Federal Regulations, shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(g) Pursuant to Section 300.322(c) of Title 34 of the Code of Federal Regulations, if no parent or guardian can attend the meeting, the local educational agency shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls, and consistent with Section 300.328 of Title 34 of the Code of Federal Regulations, the parent or guardian and the local educational agency may agree to use alternative means of meeting participation.

(h) A meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. In this event, the local educational agency shall maintain a record of its attempts to arrange a mutually agreed-upon time and place, such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents or guardians and any responses received.

(3) Detailed records of visits made to the home or place of employment of the parent or guardian and the results of those visits.

(i) The local educational agency shall take any action necessary to ensure that the parent or guardian understands the proceedings at a meeting, including arranging for an interpreter for parents or guardians with deafness or whose native language is a language other than English.

(j) The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 19. Section 56344 of the Education Code is amended to read:

56344. (a) An individualized education program required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's written consent for assessment, unless the parent agrees, in writing, to an extension. However, an individualized education program required as a result of an assessment of a pupil shall be developed within 30 days after the commencement of the subsequent regular school year as determined by each local educational agency's school calendar for each pupil for whom a referral has been made 30 days or less prior to the end of the regular school year. In the case of pupil school vacations, the 60-day time shall recommence on the date that pupil schooldays reconvene. A meeting to develop an initial individualized education program for the pupil shall be conducted within 30 days of a determination that the pupil needs special education and related services pursuant to Section 300.323(c)(1) of Title 34 of the Code of Federal Regulations.

(b) Pursuant to Section 300.323(c)(2) of Title 34 of the Code of Federal Regulations, as soon as possible following development of the individualized

education program, special education and related services shall be made available to the individual with exceptional needs in accordance with the individual's individualized education program.

(c) Each local educational agency shall have an individualized education program in effect for each individual with exceptional needs within its jurisdiction at the beginning of each school year in accordance with subdivision (a) and pursuant to Section 300.323(a) and (b) of Title 34 of the Code of Federal Regulations.

SEC. 20. Section 56345 of the Education Code is amended to read:

56345. (a) The individualized education program is a written statement for each individual with exceptional needs that is developed, reviewed, and revised in accordance with this section, as required by Section 1414(d) of Title 20 of the United States Code, and that includes the following:

(1) A statement of the individual's present levels of academic achievement and functional performance, including the following:

(A) The manner in which the disability of the individual affects his or her involvement and progress in the general education curriculum.

(B) For preschool children, as appropriate, the manner in which the disability affects his or her participation in appropriate activities.

(C) For individuals with exceptional needs who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

(2) A statement of measurable annual goals, including academic and functional goals, designed to do the following:

(A) Meet the needs of the individual that result from the disability of the individual to enable the pupil to be involved in and make progress in the general education curriculum.

(B) Meet each of the other educational needs of the pupil that result from the disability of the individual.

(3) A description of the manner in which the progress of the pupil toward meeting the annual goals described in paragraph (2) will be measured and when periodic reports on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided.

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided to enable the pupil to do the following:

(A) To advance appropriately toward attaining the annual goals.

(B) To be involved in and make progress in the general education curriculum in accordance with paragraph (1) and to participate in extracurricular and other nonacademic activities.

(C) To be educated and participate with other individuals with exceptional needs and nondisabled pupils in the activities described in this subdivision.

(5) An explanation of the extent, if any, to which the pupil will not participate with nondisabled pupils in the regular class and in the activities described in subparagraph (C) of paragraph (4).

(6) (A) A statement of individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the pupil on state and districtwide assessments consistent with Section 1412(a)(16)(A) of Title 20 of the United States Code.

(B) If the individualized education program team determines that the pupil shall take an alternate assessment instead of a particular state or districtwide assessment of pupil achievement, a statement of the following:

- (i) The reason why the pupil cannot participate in the regular assessment.
- (ii) The reason why the particular alternate assessment selected is appropriate for the pupil.

(7) The projected date for the beginning of the services and modifications described in paragraph (4), and the anticipated frequency, location, and duration of those services and modifications.

(8) Beginning not later than the first individualized education program to be in effect when the pupil is 16 years of age, or younger if determined appropriate by the individualized education program team, and updated annually thereafter, the following shall be included:

(A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.

(B) The transition services, as defined in Section 56345.1, including courses of study, needed to assist the pupil in reaching those goals.

(b) If appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the prescribed course of study of the district and to meet or exceed proficiency standards for graduation.

(2) For individuals whose native language is other than English, linguistically appropriate goals, objectives, programs, and services.

(3) Pursuant to Section 300.106 of Title 34 of the Code of Federal Regulations, extended school year services shall be included in the individualized education program and provided to the pupil if the individualized education program team of the pupil determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the pupil.

(4) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(5) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs, that the local educational agency is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the individualized education program of the pupil.

(d) Consistent with Section 56000.5 and Section 1414(d)(3)(B)(iv) of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of the services that constitute an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with “Deaf Students Education Services Policy Guidance” (57 Fed. Reg. 49274 (October 1992)), including all of the following:

(1) The pupil’s primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities, which may be met by consolidating services into a local plan area-wide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil’s primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the federal Vocational Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(5) In accordance with Section 300.113 of Title 34 of the Code of Federal Regulations, each public agency shall ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(6) Subject to paragraph (7), each public agency, pursuant to Section 300.113(b) of Title 34 of the Code of Federal Regulations, shall ensure that external components of surgically implanted medical devices are functioning properly.

(7) For a child with a surgically implanted medical device who is receiving special education and a service under Section 56363, a public agency is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted, or of an external component of the surgically implanted medical device.

(e) State moneys appropriated to districts or local educational agencies may not be used for any additional responsibilities and services associated with paragraphs (1) and (2) of subdivision (d), including the training of special education teachers and other specialists, even if those additional responsibilities or services are required pursuant to a judicial or state agency determination. Those responsibilities and services shall only be funded by a local educational agency as follows:

(1) The costs of those activities shall be funded from existing programs and funding sources.

(2) Those activities shall be supported by the resources otherwise made available to those programs.

(3) Those activities shall be consistent with Sections 56240 to 56243, inclusive.

(f) It is the intent of the Legislature that the communication skills of teachers who work with hard-of-hearing and deaf children be improved. This section does not remove the discretionary authority of the local educational agency in regard to in-service activities.

(g) Beginning not later than one year before the pupil reaches the age of 18 years, a statement that the pupil has been informed of the pupil's rights under this part, if any, that will transfer to the pupil upon reaching the age of 18 years pursuant to Section 56041.5.

(h) The individualized education program team is not required to include information under one component of a pupil's individualized education program that is already contained under another component of the individualized education program.

(i) This section does not require that additional information, beyond that explicitly required by Section 1414 of Title 20 of the United States Code and this part, be included in the individualized education program of a pupil.

SEC. 21. Section 56345.1 of the Education Code is amended to read:

56345.1. (a) The term "transition services," as defined in Section 1401(34) of Title 20 of the United States Code and as used in subparagraph (B) of paragraph (8) of subdivision (a) of Section 56345, means a coordinated set of activities for an individual with exceptional needs that does all of the following:

(1) Is designed within an results-oriented process, that is focused on improving the academic and functional achievement of the individual with exceptional needs to facilitate the movement of the pupil from school to postschool activities, including postsecondary education, vocational education, integrated employment, including supported employment, continuing and adult education, adult services, independent living, or community participation.

(2) Is based upon the individual needs of the pupil, taking into account the strengths, preferences, and interests of the pupil.

(3) Includes instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) In accordance with Section 300.43(b) of Title 34 of the Code of Federal Regulations, transition services for individuals with exceptional needs may be special education, if provided as specially designed instruction, or a designated instruction and service, if required to assist a pupil to benefit from special education.

(c) If a participating agency, other than the local educational agency, fails to provide the transition services described in the individualized education program of the pupil in accordance with Section 1414(d)(6) of Title 20 of the United States Code and paragraph (8) of subdivision (a) of Section 56345, the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition service needs for the pupil set out in the program.

SEC. 22. Section 56345.2 is added to the Education Code, to read:

56345.2. (a) Pursuant to Section 300.107 of Title 34 of the Code of Federal Regulations, each public agency shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the individualized education program team of the individual with exceptional needs, to provide nonacademic and extracurricular services and activities in the manner necessary to afford individuals with exceptional needs an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with exceptional needs, and employment of pupils, including both employment by the public agency and assistance in making outside employment available.

(c) Pursuant to Section 300.117 of Title 34 of the Code of Federal Regulations, each public agency shall ensure that each individual with exceptional needs participates with nondisabled children in extracurricular services and activities to the maximum extent appropriate to the needs of that individual. Each public agency shall ensure that each individual with exceptional needs has the supplementary aids and services determined by the individualized education program team of the individual to be appropriate and necessary for the individual to participate in nonacademic settings.

SEC. 23. Section 56346 of the Education Code is amended to read:

56346. (a) A local educational agency that is responsible for making a free appropriate public education and related services to the child with a disability under this part shall seek to obtain informed consent from the parent of the child before providing special education and related services to the child pursuant to Section 1414(a)(1)(D)(i)(II) of Title 20 of the United States Code. The local educational agency shall make reasonable efforts to

obtain informed consent from the parent for the initial provision of special education and related services to the child in accordance with Section 300.300(b)(2) of Title 34 of the Code of Federal Regulations.

(b) If the parent of the child fails to respond or refuses to consent to the initiation of services pursuant to subdivision (a), the local educational agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506 in order to obtain agreement or a ruling that the services may be provided to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide the consent, both of the following are applicable:

(1) The local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the local educational agency requests consent.

(2) The local educational agency shall not be required to convene an individualized education program team meeting or develop an individualized education program under this part for the child for the special education and related services for which the local educational agency requests consent.

(d) If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past, the local educational agency shall file a request for due process pursuant to Chapter 5 (commencing with Section 56500).

(e) If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the individualized education program, those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the child.

(f) With the exception of a parent of a child who fails to respond pursuant to subdivision (b), or refuses to consent to services pursuant to subdivision (b), if the local educational agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the local educational agency agree otherwise.

(g) In accordance with Section 300.300(d)(4)(i) of Title 34 of the Code of Federal Regulations, if the parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial assessment or the reassessment, or the parent fails to respond to a request to provide consent, the local educational agency



may not use the consent override procedures described in Section 300.300(a)(3) and (c)(1) of Title 34 of the Code of Federal Regulations. The local educational agency is not required to consider the child as eligible for services under Article 5.6 (commencing with Section 56170) of Chapter 2.

SEC. 24. Section 56363 of the Education Code is amended to read:

56363. (a) As used in this part, the term “designated instruction and services” means “related services” as that term is defined in Section 1401(26) of Title 20 of the United States Code and Section 300.34 of Title 34 of the Code of Federal Regulations. The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(b) These services may include, but are not limited to, the following:

(1) Language and speech development and remediation. The language and speech development and remediation services may be provided by a speech-language pathology assistant as defined in subdivision (f) of Section 2530.2 of the Business and Professions Code.

(2) Audiological services.

(3) Orientation and mobility services.

(4) Instruction in the home or hospital.

(5) Adapted physical education.

(6) Physical and occupational therapy.

(7) Vision services.

(8) Specialized driver training instruction.

(9) Counseling and guidance services, including rehabilitation counseling.

(10) Psychological services other than assessment and development of the individualized education program.

(11) Parent counseling and training.

(12) Health and nursing services, including school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program.

(13) Social worker services.

(14) Specially designed vocational education and career development.

(15) Recreation services.

(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services.

(17) Interpreting services.

(c) The terms “designated instruction and services” and “related services” do not include a medical device that is surgically implanted, including cochlear implants, the optimization of the functioning of a medical device, maintenance of that device, or the replacement of that device, pursuant to Section 300.34(b) of Title 34 of the Code of Federal Regulations. In accordance with Section 300.34(b) of Title 34 of the Code of Federal Regulations, nothing in this subdivision shall do any of the following:

(1) Limit the right of an individual with exceptional needs with a surgically implanted device, including a cochlear implant, to receive related services or designated instruction and services that are determined by the individualized education program team to be necessary for the individual to receive a free appropriate public education.

(2) Limit the responsibility of a local educational agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the individual, including breathing, nutrition, or operation of other bodily functions, while the individual is transported to and from school or is at school.

(3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required by Section 300.113(b) of Title 34 of the Code of Federal Regulations.

SEC. 25. Section 56380.1 of the Education Code is amended to read:

56380.1. (a) In making changes to a pupil’s individualized education program after the annual individualized education program meeting for a school year, the parent of the individual with exceptional needs and the local educational agency may agree, pursuant to Section 1414(d)(3)(D) of Title 20 of the United States Code, not to convene an individualized education program meeting for the purposes of making those changes, and instead may develop a written document, signed by the parent and by a representative of the local educational agency, to amend or modify the pupil’s existing individualized education program.

(b) Changes to the individualized education program may be made, in accordance with Section 1414(d)(3)(F) of Title 20 of the United States Code and Section 300.324(a)(6) of Title 34 of the Code of Federal Regulations, either by the entire individualized education program team at an individualized education program team meeting, or, as provided in subdivision (a), by amending the individualized education program rather than by redrafting the entire individualized education program. Upon request, a parent shall be provided with a revised copy of the individualized education program with the amendments incorporated.

(c) If changes are made to the pupil’s individualized education program, in accordance with subdivisions (a) and (b), the local educational agency shall ensure that the pupil’s individualized education program team is informed of those changes as required by Section 300.324(a)(4)(ii) of Title 34 of the Code of Federal Regulations.

SEC. 26. Section 56381 of the Education Code is amended to read:

56381. (a) (1) A reassessment of the pupil, based upon procedures specified in Section 56302.1 and in Article 2 (commencing with Section

56320), and in accordance with Section 1414(a), (b), and (c) of Title 20 of the United States Code, shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment.

(2) A reassessment shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise, and shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary.

If the reassessment so indicates, a new individualized education program shall be developed.

(b) As part of a reassessment, the individualized education program team and other qualified professionals, as appropriate, shall do the following:

(1) Review existing assessment data on the pupil, including assessments and information provided by the parents of the pupil, as specified in Section 300.305(a)(1)(i) of Title 34 of the Code of Federal Regulations, current classroom-based assessments and observations, and teacher and related services providers' observations.

(2) On the basis of the review conducted pursuant to paragraph (1), and input from the parents of the pupil, identify what additional data, if any, is needed to determine:

(A) Whether the pupil continues to have a disability described in Section 1401(3) of Title 20 of the United States Code.

(B) The present levels of performance and educational needs of the pupil.

(C) Whether the pupil continues to need special education and related services.

(D) Whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

(c) The local educational agency shall administer tests and other assessment materials needed to produce the data identified by the individualized education program team.

(d) If the individualized education program team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the pupil continues to be an individual with exceptional needs, and to determine the educational needs of the pupil, the local educational agency shall notify the parents of the pupil of that determination and the reasons for it, and the right of the parents to request an assessment to determine whether the pupil continues to be an individual with exceptional needs, and to determine the educational needs of the pupil. The local educational agency is not required to conduct an assessment, unless requested by the parents of the pupil.

(e) A local educational agency shall assess an individual with exceptional needs in accordance with this section and procedures specified in Article 2 (commencing with Section 56320), as provided in Section 300.306(c)(2) of Title 34 of the Code of Federal Regulations.

(f) (1) A reassessment may not be conducted, unless the written consent of the parent is obtained prior to reassessment, except pursuant to subdivision (e) of Section 56506. Pursuant to Section 300.300(c)(1) and (2) of Title 34 of the Code of Federal Regulations, informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the parent of the child has failed to respond.

(2) To meet the reasonable measure requirements of this subdivision, the local educational agency shall use procedures consistent with those set forth in Section 300.322(d) of Title 34 of the Code of Federal Regulations.

(3) If the parent refuses to consent to the reassessment, the local educational agency may, but is not required to, pursue the reassessment by using the consent override procedures described in Section 300.300(a)(3) of Title 34 of the Code of Federal Regulations.

(4) The local educational agency does not violate its obligations under Section 300.111 and Sections 300.301 to 300.311, inclusive, of Title 34 of the Code of Federal Regulations if it declines to pursue the reassessment.

(g) The individualized education program team and other qualified professionals referenced in subdivision (b) may conduct the review without a meeting, as provided in Section 300.305(b) of Title 34 of the Code of Federal Regulations.

(h) Before determining that the individual is no longer an individual with exceptional needs, a local educational agency shall assess the individual in accordance with Section 56320 and this section, as appropriate, and in accordance with Section 1414 of Title 20 of the United States Code.

(i) (1) The assessment described in subdivision (h) shall not be required before the termination of a pupil's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under Section 56026.

(2) For a pupil whose eligibility under this part terminates under circumstances described in paragraph (1), a local educational agency shall provide the pupil with a summary of the academic achievement and functional performance of the pupil, which shall include recommendations on the manner in which to assist the pupil in meeting his or her postsecondary educational goals as required in Section 1414(c)(5)(B)(ii) of Title 20 of the United States Code.

(j) To the extent possible, the local educational agency shall encourage the consolidation of reassessment meetings for the individual with exceptional needs and other individualized education program team meetings for the individual.

SEC. 27. Section 56500.2 of the Education Code is amended to read:

56500.2. (a) (1) Notwithstanding any other provision of law, a complaint filed with the department regarding any alleged violations of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or implementing regulations (Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations), or a provision of this part,

shall be investigated in an expeditious and effective manner in accordance with Sections 300.151 to 300.153, inclusive, of Title 34 of the Code of Federal Regulations. A written decision shall be issued to the complainant in accordance with the 60-day time limit specified in Section 300.152 of Title 34 of the Code of Federal Regulations.

(2) The party filing the complaint shall forward a copy of the complaint to the local educational agency or public agency serving the child at the same time the party files the complaint with the department, in accordance with Section 300.153(d) of Title 34 of the Code of Federal Regulations.

(b) Pursuant to Section 300.153(c) of Title 34 of the Code of Federal Regulations, a complaint filed under subdivision (a) shall allege a violation that occurred not more than one year prior to the date that the complaint is received by the department.

(c) The complaint shall include all of the following:

(1) A statement that a local educational agency or public agency has violated a requirement of this part or Part B of the federal Individuals with Disabilities Education Act (Title 20 (commencing with Section 1400) of the United States Code), or Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations.

(2) The facts on which the statement is based.

(3) The signature and contact information for the complainant.

(4) If alleging violations with respect to a specific child, all of the following:

(A) The name and address of residence of the child.

(B) The name of the school the child is attending.

(C) In the case of a homeless child or youth within the meaning of paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child, and the name of the school the child is attending.

(D) A description of the nature of the problem of the child, including facts relating to the problems.

(E) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(d) The Superintendent shall develop a model form, pursuant to Section 300.509 of Title 34 of the Code of Federal Regulations, to assist parents and public agencies in filing a state complaint under this section.

SEC. 28. Section 56500.3 of the Education Code is amended to read:

56500.3. (a) It is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process hearing. It is also the intent of the Legislature that these voluntary prehearing request mediation conferences be an informal process conducted in a nonadversarial atmosphere to resolve issues relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties. Therefore, attorneys or other independent contractors used to provide legal advocacy services may not

attend or otherwise participate in the prehearing request mediation conferences.

(b) This part does not preclude the parent or the public agency from being accompanied and advised by nonattorney representatives in the mediation conferences and consulting with an attorney prior to or following a mediation conference. For purposes of this section, “attorney” means an active, practicing member of the State Bar of California or another independent contractor used to provide legal advocacy services, but does not mean a parent of the pupil who is also an attorney.

(c) Requesting or participating in a mediation conference is not a prerequisite to requesting a due process hearing.

(d) All requests for a mediation conference shall be filed with the Superintendent. The party initiating a mediation conference by filing a written request with the Superintendent shall provide the other party to the mediation with a copy of the request at the same time the request is filed with the Superintendent. The mediation conference shall be conducted by a person knowledgeable in the process of reconciling differences in a nonadversarial manner and under contract with the department pursuant to Section 56504.5. The mediator shall be knowledgeable in the laws and regulations governing special education.

(e) The prehearing mediation conference shall be scheduled within 15 days of receipt by the Superintendent of the request for mediation. The mediation conference shall be completed within 30 days after receipt of the request for mediation unless both parties to the prehearing mediation conference agree to extend the time for completing the mediation. Pursuant to Section 300.506(b)(4) of Title 34 of the Code of Federal Regulations, and to encourage the use of mediation, the state shall bear the cost of the mediation process, including any meetings described in Section 300.506(b)(2) of Title 34 of the Code of Federal Regulations. The costs of mediation shall be included in the contract described in Section 56504.5.

(f) In accordance with Section 1415(e)(2)(F) of Title 20 of the United States Code, if a resolution is reached that resolves the due process issue through the mediation process, the parties shall execute a legally binding written agreement that sets forth the resolution and that does the following:

(1) States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(2) Is signed by both the parent and the representative of the public agency who has the authority to bind the agency.

(3) Is enforceable in any state court of competent jurisdiction or in a federal district court of the United States.

(g) If the mediation conference fails to resolve the issues to the satisfaction of all parties, the party who requested the mediation conference has the option of filing for a state-level hearing pursuant to Section 56505. The mediator may assist the parties in specifying any unresolved issues to be included in the hearing request.

(h) Any mediation conference held pursuant to this section shall be scheduled in a timely manner and shall be held at a time and place reasonably convenient to the parties to the dispute in accordance with Section 300.506(b)(5) of Title 34 of the Code of Federal Regulations.

(i) The mediation conference shall be conducted in accordance with regulations adopted by the board.

(j) (1) Notwithstanding any procedure set forth in this chapter, a public agency and a parent, if the party initiating the mediation conference so chooses, may meet informally to resolve any issue or issues to the satisfaction of both parties prior to the mediation conference.

(2) In accordance with Section 300.506(b)(2) of Title 34 of the Code of Federal Regulations, a public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party as follows:

(A) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 1471 or Section 1472 of Title 20 of the United States Code.

(B) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(k) The procedures and rights contained in this section shall be included in the notice of parent rights attached to the assessment plan of the pupil pursuant to Section 56321.

SEC. 29. Section 56500.4 of the Education Code is amended to read:

56500.4. (a) Pursuant to Section 1415(b)(3) and (4) and (c)(1) of Title 20 of the United States Code, and in accordance with Section 300.503 of Title 34 of the Code of Federal Regulations, prior written notice shall be given by the public agency to the parents or guardians of an individual with exceptional needs, or to the parents or guardians of a child upon initial referral for assessment, and a reasonable time before the public agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child. In accordance with Sections 300.304 and 300.503 of Title 34 of the Code of Federal Regulations, the public agency shall provide a description of any assessment procedures the agency proposes to conduct.

(b) The notice required under subdivision (a) shall, in accordance with Section 300.503(b) of Title 34 of the Code of Federal Regulations, include all of the following:

(1) A description of the action proposed or refused by the public agency.

(2) An explanation of why the public agency proposes or refuses to take the action.

(3) A description of each assessment procedure, assessment, record, or report the public agency used as a basis for the proposed or refused action.

(4) A statement that the parents of an individual with exceptional needs have protection under the procedural safeguards of this part and, if this

notice is not an initial referral for assessment, the means by which a copy of a description of the procedural safeguards can be obtained.

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(6) A description of other options that the individualized education program team considered and the reasons why those options were rejected.

(7) A description of other factors that are relevant to the proposal or refusal of the agency.

SEC. 30. Section 56501.5 of the Education Code is amended to read:

56501.5. (a) Notwithstanding any other provision of law, prior to the opportunity for an impartial due process hearing under this chapter, the local educational agency shall convene a resolution meeting with the parents and the relevant member or members of the individualized education program team who have specific knowledge of the facts identified in the due process hearing request, in accordance with Section 1415(f)(1)(B) of Title 20 of the United States Code and Section 300.510 of Title 34 of the Code of Federal Regulations. The parent and the local educational agency shall determine the relevant members of the individualized education program team to attend the meeting.

(1) The meeting shall be convened within 15 days of receiving notice of the due process hearing request of the parent.

(2) The meeting shall include a representative of the local educational agency who has decisionmaking authority on behalf of the agency.

(3) The meeting shall not include an attorney of the local educational agency, unless the parent is accompanied by an attorney.

(4) The purpose of the meeting is for the parent of the child to discuss the due process hearing issue, and the facts that form the basis of the due process hearing request, so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(b) The resolution meeting described in subdivision (a) need not be held if the parents and the local educational agency agree in writing to waive the meeting, or agree to use the mediation process as provided for in this chapter.

(c) If the local educational agency has not resolved the due process hearing issue to the satisfaction of the parents within 30 days of the receipt of the due process hearing request notice, the due process hearing may occur. Except as provided in subdivision (d), the timeline for issuing a final decision under paragraph (3) of subdivision (f) of Section 56505 begins at the expiration of this 30-day period.

(d) The 45-day timeline for the due process hearing cited in paragraph (3) of subdivision (f) of Section 56505 starts the day after one of the following events, provided the local educational agency also affords notice of these events to the agency or contractor providing due process hearings pursuant to Section 56504.5:

(1) Both parties agree in writing to waive the resolution meeting.



(2) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible.

(3) If both parties agree in writing to continue a mediation that started before the end of the 30-day resolution period to a date after the 30-day resolution period, but later, the parent or local educational agency withdraws from the mediation process.

(e) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subdivision (c), the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(1) If the local educational agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in Section 300.322(d) of Title 34 of the Code of Federal Regulations, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parent and any responses received, and detailed records of visits made to the home or place of employment of the parent, the local educational agency may, at the conclusion of the 30-day period, request that a hearing officer dismiss the due process hearing request of the parent.

(2) If the local educational agency fails to hold the resolution meeting specified in subdivision (a) within 15 days of receiving notice of a due process hearing request of a parent or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(f) In the case that a resolution is reached to resolve the due process hearing issue at a meeting described in subdivision (a), the parties shall execute a legally binding agreement that is both of the following:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency.

(2) Enforceable in a state court of competent jurisdiction or in a federal district court of the United States.

(g) If the parties execute an agreement pursuant to subdivision (d), a party may void the agreement within three business days of the execution of the agreement.

SEC. 31. Section 56502 of the Education Code is amended to read:

56502. (a) All requests for a due process hearing shall be filed with the Superintendent in accordance with Section 300.508(a) and (b) of Title 34 of the Code of Federal Regulations.

(b) The Superintendent shall develop a model form to assist parents and guardians in filing a request for due process that is in accordance with Section 300.509 of Title 34 of the Code of Federal Regulations.

(c) (1) The party, or the attorney representing the party, initiating a due process hearing by filing a written request with the Superintendent shall provide the other party to the hearing with a copy of the request at the same

time as the request is filed with the Superintendent. The due process hearing request notice shall remain confidential. In accordance with Section 1415(b)(7)(A) of Title 20 of the United States Code, the request shall include the following:

(A) The name of the child, the address of the residence of the child, or available contact information in the case of a homeless child, and the name of the school the child is attending.

(B) In the case of a homeless child or youth within the meaning of paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child and the name of the school the child is attending.

(C) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem.

(D) A proposed resolution of the problem to the extent known and available to the party at the time.

(2) A party may not have a due process hearing until the party, or the attorney representing the party, files a request that meets the requirements listed in this subdivision.

(d) (1) The due process hearing request notice required by Section 1415(b)(7)(A) of Title 20 of the United States Code shall be deemed to be sufficient unless the party receiving the notice notifies the due process hearing officer and the other party in writing that the receiving party believes the due process hearing request notice has not met the notice requirements. The party providing a hearing officer notification shall provide the notification within 15 days of receiving the due process hearing request notice. Within five days of receipt of the notification, the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of Section 1415(b)(7)(A) of Title 20 of the United States Code, and shall immediately notify the parties in writing of the determination.

(2) (A) The response to the due process hearing request notice shall be made within 10 days of receiving the request notice in accordance with Section 1415(c)(2)(B) of Title 20 of the United States Code.

(B) In accordance with Section 300.508(e)(1) of Title 34 of the Code of Federal Regulations, if the local educational agency has not sent a prior written notice under Section 56500.4 and Section 300.503 of Title 34 of the Code of Federal Regulations to the parent regarding the subject matter contained in the due process hearing request of the parent, the response from the local educational agency to the parent shall include all of the following:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request.

(ii) A description of other options that the individualized education program team considered and the reasons why those options were rejected.

(iii) A description of each assessment procedure, assessment, record, or report the agency used as the basis for the proposed or refused action.

(iv) A description of other factors that are relevant to the proposed or refused action of the agency.

(C) A response by a local educational agency under subparagraph (B) shall not be construed to preclude the local educational agency from asserting that the due process request of the parent was insufficient, where appropriate.

(D) Except as provided under subparagraph (B), the party receiving a due process hearing request notice, within 10 days of receiving the notice, shall send to the other party, in accordance with Section 300.508(f) of Title 34 of the Code of Federal Regulations, a response that specifically addresses the issues raised in the due process hearing request notice.

(e) A party may amend a due process hearing request notice only if the other party consents in writing to the amendment and is given the opportunity to resolve the hearing issue through a meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the United States Code, or the due process hearing officer grants permission, except that the hearing officer may only grant permission at any time not later than five days before a due process hearing occurs. The applicable timeline for a due process hearing under this chapter shall recommence at the time the party files an amended notice, including the timeline under Section 1415(f)(1)(B) of Title 20 of the United States Code.

(f) The Superintendent shall take steps to ensure that within 45 days after receipt of the written hearing request the hearing is immediately commenced and completed, including, any mediation requested at any point during the hearing process pursuant to paragraph (2) of subdivision (b) of Section 56501, and a final administrative decision is rendered, unless a continuance has been granted pursuant to Section 56505.

(g) Notwithstanding any procedure set forth in this chapter, a public agency and a parent or guardian, if the party initiating the hearing so chooses, may meet informally to resolve an issue or issues relating to the identification, assessment, or education and placement of the child, or the provision of a free appropriate public education to the child, to the satisfaction of both parties prior to the hearing. The informal meeting shall be conducted by the district superintendent, county superintendent, or director of the public agency or his or her designee. A designee appointed pursuant to this subdivision shall have the authority to resolve the issue or issues.

(h) Upon receipt by the Superintendent of a written request by the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties of the request for the hearing and the scheduled date for the hearing. The notice shall advise all parties of all their rights relating to procedural safeguards. The Superintendent or his or her designee shall provide both parties with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. This list shall include a brief description of the requirement to qualify for the services. The Superintendent or his or her

designee shall have complete discretion in determining which individuals or groups shall be included on the list.

(i) In accordance with Section 1415(f)(3)(B) of Title 20 of the United States Code, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under this section, unless the other party agrees otherwise.

SEC. 32. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) (1) The hearing shall be conducted by a person who, at a minimum, shall possess knowledge of, and the ability to understand, the provisions of this part and related state statutes and implementing regulations, the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal regulations pertaining to the act, and legal interpretations of this part and the federal law by federal and state courts, and who has satisfactorily completed training pursuant to this subdivision. The Superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate.

(2) The hearing officer shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.

(3) The hearing officer shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(4) A due process hearing shall not be conducted by an individual listed in Section 1415(f)(3)(A)(i) of Title 20 of the United States Code. Pursuant to Section 300.511(c)(2) of Title 34 of the Code of Federal Regulations, a person who is qualified to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to Section 300.518(a) of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.533 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school, with the consent of his or her parent or guardian, shall be placed in the public school program until all proceedings have been completed. As provided in Section 300.518(d) of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the parent or guardian of the pupil that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local educational agency and the parent or guardian. In accordance with Section 300.518(c) of Title 34 of the Code of Federal

Regulations, if a due process hearing request involves an application for initial services from a child who is transitioning from an early education program under Chapter 4.4 (commencing with Section 56425) to a special education program serving individuals with exceptional needs between the ages of three to five years, inclusive, under Chapter 4.45 (commencing with Section 56440), and is no longer eligible for early education services because the child has turned three years of age, the local educational agency is not required to provide early education services that the child had been receiving. If the child is found eligible for special education and related services for children age three years of age and older, and the parent or guardian consents to the initial provision of special education and related services under Section 300.300(b) of Title 34 of the Code of Federal Regulations, the local educational agency shall provide those special education and related services that are not in dispute between the parent or guardian and the local educational agency.

(e) A party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of, witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with Section 300.512(c)(3) of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of Section 1417(c) of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to Section 1415(h)(4) of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by

that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to Section 300.512(a)(3) of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) (1) In accordance with Section 1415(f)(3)(E) of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(2) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a free appropriate public education only if the procedural violation did any of the following:

(A) Impeded the right of the child to a free appropriate public education.

(B) Significantly impeded the opportunity of the parents to participate in the decisionmaking process regarding the provision of a free appropriate public education to the child of the parents.

(C) Caused a deprivation of educational benefits.

(3) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for a nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for the placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing not later than 45 days after the expiration of the 30-day period pursuant to subdivision (c) of Section 56501.5. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. An extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(4) This subdivision does not preclude a due process hearing officer from ordering a local educational agency to comply with procedural requirements under this chapter.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(j) In a hearing conducted pursuant to this section, the hearing officer shall not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party also may exercise the right to bring a civil action in a district court of the United States without regard to the amount in controversy, pursuant to Section 300.516 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of an administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public agency and the parent or guardian of the child agree otherwise. An action brought under this subdivision shall adhere to Section 300.516(c) of Title 34 of the Code of Federal Regulations.

(l) A request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. In accordance with Section 1415(f)(3)(D) of Title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The withholding of information by the local educational agency from the parent that was required under this part to be provided to the parent.

(m) Pursuant to Section 300.511(c) of Title 34 of the Code of Federal Regulations, each public agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public agencies by the organization or entity under contract with the department to conduct due process hearings.

(n) A party who filed for a due process hearing prior to the effective date of this section is not bound by the two-year statute of limitations time period in subdivision (l) if the party filed a request within the three-year statute of limitations provision pursuant to subdivision (l) as it read prior to October 9, 2006.

(o) This section shall become operative October 9, 2006.

SEC. 33. Section 56515 of the Education Code is amended to read:

56515. (a) In addition to the provisions of Chapter 6.5 (commencing with Section 49060) of Part 27, the confidentiality of personally identifiable information about individuals with exceptional needs shall be governed and protected in accordance with Sections 1412(a)(8) and 1417(c) of Title 20 of the United States Code and Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations, including Sections 300.611 to 300.626, inclusive, covering notice to parents, access rights, records of access, records on more than one child, list of types and locations of information, fees, amendment of records at parent's request, opportunity

for a hearing, result of hearing, hearing procedures, consent, destruction of information, children's privacy rights, and enforcement, and Section 1413(i) of Title 20 of the United States Code and Section 300.229 of Title 34 of the Code of Federal Regulations, regarding disciplinary information.

(b) Pursuant to Section 300.32 of Title 34 of the Code of Federal Regulations, "personally identifiable," as used in this part, includes all of the following information:

- (1) The name of the child, the parent of the child, or other family member.
- (2) The address of the child.
- (3) A personal identifier, including, but not limited to, the social security number of the child, a pupil number, a list of personal characteristics, or other information that would make it possible to identify the child with reasonable certainty.

(c) (1) In accordance with Section 300.622 of Title 34 of the Code of Federal Regulations, parental consent shall be obtained before personally identifiable information is disclosed to the parties, other than officials of participating agencies in accordance with Section 300.622(b)(1) of Title 34 of the Code of Federal Regulations, unless the information is contained in education records, and the disclosure is authorized without parental consent under Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations. Except as provided in paragraphs (2) and (3), parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part or Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations.

(2) Parental consent, or the consent of an eligible child who has reached the age of 18 years, shall be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with Section 300.321(b)(3) of Title 34 of the Code of Federal Regulations.

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency of the residence of the parent, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located and officials in the local educational agency of the residence of the parent.

SEC. 34. Section 56600.6 of the Education Code is amended to read:

56600.6. (a) The Superintendent shall ensure that pupil and program performance results are monitored at the state and local levels in order to comply with Section 1412(a)(15) of Title 20 of the United States Code by evaluating pupil performance against key performance indicators. As necessary, other data may be collected to support the state's participation in national studies and evaluations described in Section 1474(a) of Title 20 of the United States Code.

(b) The Superintendent shall monitor, provide technical assistance, and enforce this part, and Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) in accordance with Section



1416 of Title 20 of the United States Code, and Subpart F (commencing with Section 300.600) of Title 34 of the Code of Federal Regulations, and annually report to the United States Department of Education on performance.

(c) Pursuant to Section 300.600(b) of Title 34 of the Code of Federal Regulations, the primary focus of the state's monitoring activities shall be on the following:

(1) Improving educational results and functional outcomes for all individuals with exceptional needs.

(2) Ensuring that public agencies meet the program requirements under this part and under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), with a particular emphasis on those requirements that are most closely related to improving educational results for individuals with exceptional needs.

(d) As part of state monitoring and enforcement, the Superintendent shall use quantifiable indicators and qualitative indicators as are needed to adequately measure performance in the indicators established by the United States Secretary of Education, and in the following priority areas specified in Section 300.600(d) of Title 34 of the Code of Federal Regulations:

(1) Provision of a free appropriate public education in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in Section 1437(a)(9) of Title 20 of the United States Code and in Section 300.43 of Title 34 of the Code of Federal Regulations.

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) As part of the performance plan of the state, as required in Section 300.601 of Title 34 of the Code of Federal Regulations, the Superintendent shall collect valid and reliable information as needed to report annually to the United States Secretary of Education.

SEC. 35. Section 56841 of the Education Code is amended to read:

56841. (a) Federal funds available through Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and appropriated through the annual Budget Act shall only be used as follows:

(1) For the excess costs of providing special education and related services to individuals with exceptional needs.

(2) To supplement state, local, and other federal funds and not to supplant those funds.

(b) Except as provided in subdivisions (c) and (d), the funds shall not be used to reduce the level of expenditures for the education of individuals with exceptional needs made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(c) Notwithstanding subdivision (b), a local educational agency may reduce the level of expenditures from local funds where the reduction is attributable to the following:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel.

(2) A decrease in the enrollment of individuals with exceptional needs.

(3) The termination of the obligation of the local educational agency, consistent with this part, to provide a program of special education to an individual or individuals with exceptional needs that is an exceptionally costly program, as determined by the Superintendent, because any of the following is applicable:

(A) The child has left the jurisdiction of the local educational agency.

(B) The child has reached the age at which the obligation of the local educational agency to provide a free appropriate public education to the child has terminated.

(C) The child no longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of facilities.

(d) Notwithstanding the provisions of paragraph (2) of subdivision (a) and subdivision (b), for any fiscal year in which the allocation received by a local educational agency under Section 1411(f) of Title 20 of the United States Code exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by Section 1413(a)(2)(A)(iii) of Title 20 of the United States Code by not more than 50 percent of the amount of the excess. If a local educational agency exercises the authority under this subdivision, the local educational agency shall use an amount of local funds equal to the reduction in expenditures under this subdivision to carry out activities authorized under the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.).

(e) Notwithstanding subdivision (d), if the Superintendent determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of Section 1413(a) of Title 20 of the United States Code, or if the Superintendent has taken action against the local educational agency under Section 1416 of Title 20 of the United States Code, the Superintendent shall prohibit the local educational agency from reducing the level of expenditures under subdivision (d) for that fiscal year.

(f) The amount of funds expended by a local educational agency under Section 1413(f) of Title 20 of the United States Code for early intervening services shall count toward the maximum amount of expenditures the local educational agency may reduce under subdivision (d).

(g) Notwithstanding Section 1413(a)(2)(A) of Title 20 of the United States Code or any other provision of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency may use federal special education funds for any fiscal year to carry out a schoolwide program under Section 1114 of the federal Elementary and

Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), except that the amount so used in any such program shall not exceed the number of individuals with exceptional needs participating in the schoolwide program, multiplied by the amount received by the local educational agency under this article for that fiscal year, and divided by the number of individuals with exceptional needs in the jurisdiction of that local educational agency.

(h) (1) Notwithstanding subdivisions (a) to (g), inclusive, a local educational agency may also use federal special education funds for other purposes specified in Section 1413(a) of Title 20 of the United States Code.

(2) In accordance with Section 300.208(b) of Title 34 of the Code of Federal Regulations, a local educational agency may use federal funds received under this article to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of individuals with exceptional needs, that is needed for the implementation of those case management activities.

SEC. 36. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that pupils with disabilities receive services, to ensure that state law is in conformity with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and implementing regulations that became effective on October 13, 2006, and with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), and to ensure that California continues to receive federal funding to pay for services provided to pupils with disabilities at the earliest possible time, it is necessary that this act take effect immediately.